

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD V. McNAMARA and DEPARTMENT OF DEFENSE,
DEFENSE INVESTIGATIVE SERVICE, Syracuse, NY

*Docket No. 99-2190; Submitted on the Record;
Issued September 13, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that he sustained a recurrence of disability on January 19, 1998 causally related to his December 4, 1987 employment injury.

On December 4, 1987 appellant, then a 33-year-old special investigator, filed a claim for injuries sustained on that date in a motor vehicle accident. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar and cervical strain. Appellant returned to his regular employment on February 9, 1988.

On January 26, 1998 appellant filed a claim alleging that he sustained a recurrence of disability on January 19, 1998 causally related to his December 4, 1987 employment injury. He stopped work on January 20, 1998 and returned to work on January 26, 1998.

In a letter to the Office accompanying his claim, appellant related that after he returned to work in 1988 he continued to have some discomfort in three areas of his back but did not seek additional medical treatment. He stated that on January 19, 1998 he experienced back discomfort when he turned to look left while squatting. Appellant related that over the next few days the pain worsened and he sought medical treatment. He requested authorization from the Office for medical treatment and compensation for time lost from work.

By letter dated February 25, 1998, the Office requested additional factual and medical information from appellant.

In a letter dated April 24, 1998, the employing establishment controverted appellant's claim on the grounds that he had experienced a specific injury to his back on January 19, 1998 during a time when he was not at work.

By decision dated July 16, 1998, the Office denied appellant's claim after finding that the evidence was insufficient to establish that he sustained a recurrence of disability due to his accepted employment injury. He requested a hearing but subsequently changed his request to a

review of the written record. In a decision dated May 28, 1999 and finalized June 3, 1999, a hearing representative affirmed the Office's July 16, 1998 decision.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that he sustained a recurrence of disability causally related to his December 4, 1987 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In support of his claim, appellant submitted a report dated January 30, 1998 from Dr. Wayne A. Eckhardt, a Board-certified orthopedic surgeon, who discussed appellant's history of a motor vehicle accident on December 4, 1987 and noted that he experienced pain at the time of his injury in three areas of the back. Dr. Eckhardt stated:

"There were three specific spots that were giving [appellant] pain. One in the low back, one a little bit higher in the low back and one between the shoulder blades. Since that time, he states one of these spots may act up once or twice a year. This gives [appellant] some irritation but really nothing significant. He states that on January 19, 1998 he was squatting and turned at the same time and felt another twinge in his low back and it started to tighten up. This is why I believe this is related to [appellant's] previous injuries as well."

Dr. Eckhardt diagnosed "[l]ong term scar tissue in the back with result of sprain and recent, reaggravation of the preexisting problem." He found appellant partially disabled. Dr. Eckhardt, however, did not explain how, with reference to the specific facts of this case, appellant's 1987 back injury subsided so that he could return to his regular employment for more than 10 years and then caused a recurrence of disability beginning in January 1998. The opinion of a physician supporting causal relationship must be based on affirmative evidence, address the specific factual and medical evidence of record and include medical rationale.³

In follow-up reports dated February 18 and May 20, 1998, Dr. Eckhardt noted that appellant's lumbosacral strain had improved but did not discuss the cause of the diagnosed condition therefore, his reports are of little probative value.⁴

¹ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

² *Id.*

³ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

⁴ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value).

Appellant also submitted copies of his 1990 to 1998 yearly physical examinations required by the employing establishment. In these reports, the physicians noted appellant's complaints of periodic problems with his back but did not provide a finding regarding causation. Thus, these reports are insufficient to meet his burden of proof. Further, the examinations dated 1990 to 1997 are of little relevance because the pertinent issue is whether appellant sustained an employment-related recurrence of disability in January 1998. In the report of physical examination dated June 2, 1998, a physician indicated that appellant had "pulled scar tissue in [the] sacral area" but did not provide any conclusion regarding causation. Thus, his opinion is of little probative value.

An award of compensation may not be based on surmise, conjecture or speculation, or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.⁵ To establish causal relationship, appellant must submit a medical report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to meet his burden of proof.

⁵ *Donald W. Long*, 41 ECAB 142 (1989).

The decisions of the Office of Workers' Compensation Programs dated May 28, 1999 and finalized June 3, 1999 and dated July 16, 1998 are hereby affirmed.

Dated, Washington, DC
September 13, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member